

The Examiner has argued that the above-identified groups of claims define inventions that are independent and distinct each from the other. It is argued further that the subject matter represented by each grouping of claims have acquired a separate status in the art, require independent searches (as indicated by the different classification), which are not coextensive, and that a reference which would anticipate the subject matter of the claims of Group I would not necessarily anticipate or make obvious the other groups.

In particular, the Examiner has argued that the inventions of the claims of Groups II and I are related as product and process of use, and that the reaction mixture of Group II, as claimed, can be used in a materially different process of using that product, such as for other oxidation-reduction reactions involving the production of α -keto acids or for the production of single cell protein for nutritional supplementation.

Further, it is asserted that the invention of Group II is directed to strains of microorganisms or an active biocatalyst thereof and glutamine; that the invention of Group III is directed to bacterial strains and 2-oxoglutarate; and that the products of the inventions of Groups II and III would be expected to have distinct morphological, functional and physiological properties, as evidenced by divergent classification, process of making and process of using.

It is respectfully submitted that the Examiner has misconstrued the relationship of the subject matter of the claims of the above-identified groups. The claims of Group II are directed to a reaction mixture for producing 2-oxoglutarate comprising the specified bacteria or biocatalyst and a certain minimum amount of glutamine; while the claims of Group I are directed to the process of using the reaction mixture of the specified bacteria or biocatalyst recited in the claims of Group II and glutamine to produce 2-oxoglutarate. *As claimed*, the reaction mixture of the claims of Group II cannot be used in a materially different process than the process recited in the claims of Group I.

Section 806.05(h) of the Manual of Patent Examining Procedure (MPEP) specifies that a product and a process of using the product are shown to be distinct inventions if either (A) the process of using, *as claimed*, can be practiced with another materially different product, or (B) the product, *as claimed*, can be used in a materially different process. As discussed above, the process as claimed is for producing 2-oxoglutarate

by incubating a specified bacteria or biocatalyst using L-glutamine; and the product as claimed comprises the specified bacteria or biocatalyst and L-glutamine for producing 2-oxoglutaramate. Hence, the process as claimed cannot be practiced with another materially different product; nor can the product as claimed be used in a materially different process. Restriction between the claims of Groups I and II is therefore not proper. Withdrawal of this restriction requirement is therefore respectfully requested.

Similarly, the claims of Group III and the claims of Groups I are related as a process of making and the product made from that process. Section 806.05(f) of the MPEP requires that in such a circumstance, distinctness is shown if (A) the process, *as claimed*, can be used to make other and different products, or (B) the product, *as claimed*, can be made by another and materially different process. As claimed, the process cannot be used to make other and different products (the process claiming the production of 2-oxoglutaramate from L-glutamine by using a specified bacteria or biocatalyst); while the product, as claimed, cannot be made by another and materially different process - the product being the specified bacteria or biocatalyst and 2-oxoglutaramate.

The claims of Groups I, II and III, in essence, are directed to a single related invention; namely, a reaction mixture for producing 2-oxoglutaramate from L-glutamine (Group II); the process of using that reaction mixture (Group I) and the product produced from that process (Group III). It is submitted that a search of the subject matter of the claims of Groups I, II, and III can be made without a serious burden on the Examiner because a thorough search of the process necessarily requires a search of the reaction mixture and the product produced by the process even though the claims of the three groups may be classified in different Classes and subclasses. Separate classification by itself is not conclusive of distinctness. Section 806 of the MPEP states that restriction may be proper when disclosed inventions are related; and that when related inventions are not distinct, restriction is never proper. This is particularly true for the subject matter of the claims of Groups I and II, and Groups I and III.

In view of the above, it is submitted that it would be in the interest of the public to maintain all of the claims of Groups I, II and III in one application. Reconsideration and withdrawal of the restriction requirement is respectfully requested.

In order for this response to be complete, Applicant hereby elects the claims of Group I (Microbial process of making 2-oxoglutaramate) for purposes of examination.

In the event that the Examiner considers any matter to remain unresolved, the Examiner is invited to phone Applicants' representative at the number indicated below in order to expedite resolution of any such matter.

Respectfully submitted,

Linda Pingitore
Registration No. 30,414



Telephone No. (412) 434-3704

Facsimile No. (412) 434-4292

PPG Industries, Inc.

One PPG Place

Pittsburgh, PA 15272

Pittsburgh, Pennsylvania
January 15, 2003